

COMMISSIONERS APPROVAL

GRANDSTAFF *cg*

ROKOSCH

THOMPSON

CHILCOTT *je*

DRISCOLL *kd*

PLETTENBERG (Clerk & Recorder)

Members Present..... Commissioner Carlotta Grandstaff,
Commissioner Jim Rokosch, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Date.....March 19, 2008

Minutes: Beth Perkins

► The Board met for a public meeting for Market Place II Major Subdivision. Present
were Planner Tristan Riddell, Representatives Terry Nelson and Ron Uemura, Civil
Counsel Karen Mahar, and citizens.

Commissioner Grandstaff called the meeting to order and requested any conflicts of
interest, hearing none. She then requested the Planning Staff report be read.

Tristan presented the Staff Report as follows:

**MARKET PLACE II
MAJOR SUBDIVISION**

STAFF REPORT FOR PLANNING BOARD

***(Staff Note: This subdivision is being reviewed under the Ravalli County
Subdivision Regulations as amended August 4, 2005.)***

CASE PLANNER: Tristan Riddell

**REVIEWED/
APPROVED BY:** Renee Lemon

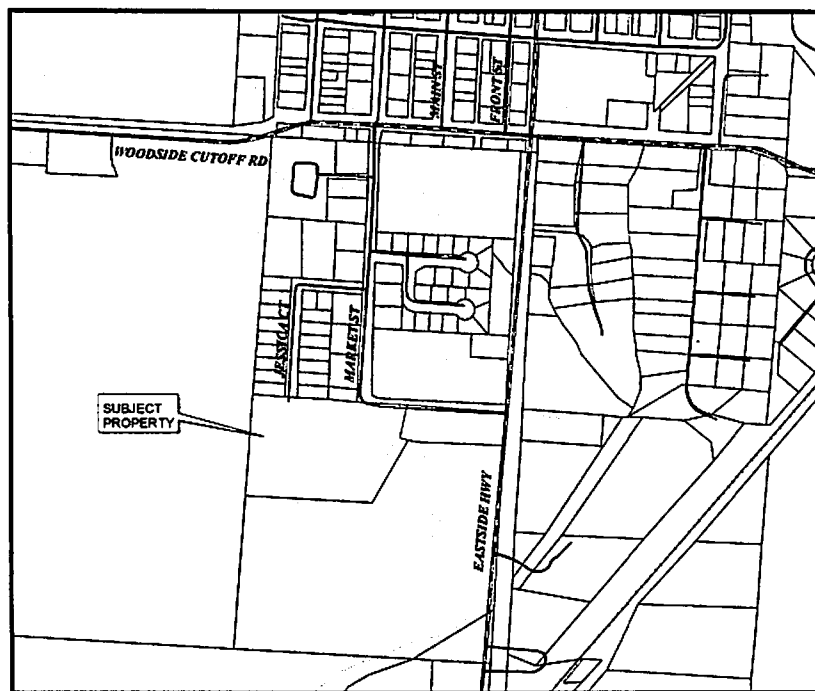
PUBLIC MEETING: Planning Board Plat Evaluation:
October 17, 2007

Planning Board Public Hearing:
November 20, 2007
BCC Public Meeting: 10:00am
March 19, 2008
Deadline for BCC action (60 working days):
March 21, 2008

SUBDIVIDER OWNER: MAN Enterprises, LLC
1021 Jessica Court
Corvallis, MT 59828

REPRESENTATIVE: Terry Nelson, Applebury Survey
914 U.S. Highway 93
Victor, MT 59875

LOCATION OF REQUEST: The property is located in Corvallis on Eastside Highway.



Map 1: Location Map
(Data Source: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

NE1/4 of Section 5, T6N, R20W, P.M.M., Ravalli
County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was determined complete on October 10, 2007. Agencies were notified of the subdivision and comments received by the Planning Department are Exhibits A-1 through A-12 of the staff report.

LEGAL NOTIFICATION:

A legal ad was published in the Ravalli Republic on November 5, 2007. Notice of the project was posted on the property and adjacent property owners were notified of the subdivision by certified mail postmarked October 17, 2007 and regular mail March 5, 2008. No public comments have been received to date.

**APPLICABLE
REGULATIONS:**

The proposal is being reviewed under the Ravalli County Subdivision Regulations (RCSR), as amended August 4, 2005.

**DEVELOPMENT
PATTERN:**

Subject property	Residential
North	Residential/Commercial
South	Residential
East	Agricultural/Residential
West	Agricultural

RAVALLI COUNTY BOARD OF COMMISSIONERS

MARCH 19, 2007

MARKET PLACE II

THIRTY ONE-LOT MAJOR SUBDIVISION

RECOMMENDED MOTION

That the Market Place II Major Subdivision be ***approved***, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

**RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE
SUBDIVISION**

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

Notification of Road Maintenance Agreement. Ravalli County, the State of Montana, or any other governmental entity does not maintain the internal subdivision roads and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for these roads was filed with this subdivision and outlines what parties are responsible for maintenance and under what conditions. *(Effects on Local Services)*

Limitation of Access onto a Public Road. A "no ingress/egress" restriction is located along the Eastside Highway frontage of the subdivision, excepting the approach to Market Street South, which precludes vehicular access onto this State-maintained road. This limitation of access may be lifted or amended with approval of the Montana Department of Transportation. *(Effects on Local Services & Effects on Public Health and Safety)*

Notification of Proximity to a Potential Dam Inundation Area in the Event of a Catastrophic Failure of the Painted Rocks Reservoir Dam and the Lake Como Dam. The entire property is located within the dam inundation area for the Painted Rocks Reservoir Dam and the western portion of the property is located within the Lake Como dam inundation area. The Painted Rocks Reservoir Dam and Lake Como Dam are owned and operated by the State of Montana, Department of Natural Resources and Conservation District, Water Resources Division, Dam Safety Program (48 North Last Chance Gulch, P.O. Box 201601, Helena, Montana, 59620-1621). A map of the probable extent of the inundation area is included as an exhibit to this document [the subdivider shall include the exhibit as an attachment]. *(Effects on Public Health and Safety)*

Notification of Proximity to Willow Creek and the Bitterroot River Floodplain. This subdivision is located in close proximity to Willow Creek and the Bitterroot River Floodplain. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the stream channel. It is recommended that property owners of this subdivision obtain flood insurance. *(Effects on Natural Environment and Public Health and Safety)*

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Living with Wildlife. Homeowners must accept the responsibility of living with wildlife, must accept responsibility for protecting their vegetation from damage, and must confine their pets and properly store garbage, pet food, and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer,

elk, black bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks (FWP) office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively see the Education portion of FWP's web site at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value. (*Effects on Wildlife and Wildlife Habitat*)

- a) Homeowners must be aware of the potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b) **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c) **Garbage** should be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
- d) **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to human, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitute a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e) **Bird feeders** attract bears. If used, bird feeders should: i) be suspended a minimum of 20 feet above ground level, ii) be at least 4 feet from any support poles or points, and iii) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f) **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of their owner(s), and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase

hoofed game animals and the owner may also be held guilty (MCA 87-3-124).

- g) **Pet food** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. **When feeding pets** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h) **Barbecue grills** should be stored indoors. Permanent, outdoor barbecue grills are discouraged in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
- i) Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer and/or elk becoming entangled in the fence or injuring themselves when trying to jump the fence.
- j) **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires the lot owners to post the County-issued addresses at the intersection of the driveways leading to all residences as soon as construction on the residences begins. *(Effects on Local Services & Effects on Public Health and Safety)*

Access Requirements for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6", and an all weather surface that can accommodate the weight of a fire truck to meet requirements of the Uniform Fire Code. Please contact the Corvallis Rural Fire District at PO Box 721, Corvallis, MT, for further information on the requirements of the Corvallis Rural Fire District and/or the Uniform Fire Code. *(Effects on Local Services and Public Health and Safety)*

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the

lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. *(Effects on Natural Environment and Public Health & Safety)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. *(Effects on Public Health & Safety)*

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. *(Effects on Natural Environment)*

Wood Stoves. The County recommends that home owners refrain from installing wood stoves if possible. The County further recommends that wood and other biomass burning stoves not be used as the primary heat source. If a homeowner chooses to burn wood as a back-up heat source, the County strongly encourages them to install an EPA-certified wood stove as the best option to reduce air pollution and more specifically, to install an EPA-certified pellet stove. More information on low emission, EPA-certified wood stoves is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Tax Credit to offset the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. Besides the tax credit for qualifying wood stoves, individual Montana residents can claim a tax credit for energy conservation investments made to a home or other building. For more information on the energy conservation tax credits and ways to save energy, please see the *Warm Hearts, Warm Homes* webpage (<http://deq.mt.gov/Energy/warmhomes/index.asp>) on the Montana Department of Environmental Quality's website. *(Effects on the Natural Environment)*

Amendment. The covenants filed with the final plat shall state that written governing body approval shall be required for amendments to provisions of the covenants listed above, that are required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with the subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in

interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*

4. The subdivider shall submit an approved approach permit, issued by the Montana Department of Transportation, for the Market Street South access prior to final plat. *(Effects on Local Services and Public Health & Safety)*
5. The internal subdivision roads shall be labeled as public road and utility easement on the final plat. *(Effects on Local Services)*
6. A no ingress/egress zone shall be placed along the Eastside Highway frontage of the subdivision, excepting the approach, as approved by the Montana Department of Transportation, on the final plat. *(Effects on Local Services and Public Health and Safety)*
7. Stop and road name signs shall be installed at the intersections of the internal subdivision roads and, as shown on the preliminary plat, prior to final plat approval. *(Effects on Local Services & Effects on Public Health and Safety)*
8. The subdivider shall submit a letter or receipt from the Corvallis School District stating that they have received an (amount)-per-lot contribution prior to final plat approval. *(Effects on Local Services)*
9. The subdivider shall submit an (amount)-per-lot contribution to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to final plat approval. *(Effects on Local Services and Public Health & Safety)*
10. The subdivider shall provide a letter from the Corvallis Rural Fire District stating that they have provided the required 1,000 gallons per minute water supply or 2,500 gallons per lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdivider may provide evidence of a \$500 contribution made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services & Effects on Public Health and Safety)*
11. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Local Services & Public Health and Safety)*
12. The subdivider shall provide evidence that plans for a Collection Box Unit (CBU), including location of the box and specifications have been approved by the local post office prior to final plat approval. *(Effects on Local Services)*
13. The following statement shall be shown on the final plat, as shown on the preliminary plat: "This property is shown to be within the Painted Rocks and Como Dam Inundations Areas." *(Effects on Public Health and Safety)*

14. The subdivider shall submit evidence from the Corvallis County Sewer District showing that annexation into the district has been granted, prior to final plat approval. *(Effects on Local Services, Natural Environment, and Public Health and Safety)*
15. The following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Corvallis Rural Fire District, has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information". *(Effects on Local Services and Public Health & Safety)*

INTRODUCTION

Market Place II is a thirty one-lot major subdivision proposed on 10.75 acres. The property is located in Corvallis. It is located in the Corvallis School District and the Corvallis Rural Fire District. The proposal is for thirty one (31) single-family residential lots. All lots will connect to the Corvallis Sewer District and have individual wells.

Staff is recommending conditional approval of the subdivision.

SUBDIVISION REPORT

COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed major subdivision on 10.75 acres will result in 31 lots that range in size from 10,006 square feet to 11,600 square feet. The property is located within the community of Corvallis off Eastside Highway. *(Market Place II Subdivision Application)*
2. None of the property has soils listed as Prime Farmland or Farmland of Statewide (U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS)).
3. The property is located in an area where there is a mix of agricultural and residential uses. (Aerial Photo) To mitigate impacts on nearby agricultural practices, a notification of agricultural operations shall be filed with the final plat. *(Condition 1)*

Conclusions of Law:

1. With the recommended mitigating condition, impacts of this subdivision on surrounding agricultural practices will be minimized.

2. The creation of these lots will not take Prime Farmland or Farmland of Statewide Importance out of production.
3. By providing housing near an existing community and infrastructure, important agricultural land in other areas may be protected.
4. This subdivision will have few impacts on agriculture.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

1. According to the application, the property does not have water rights.
2. According to the application, there are no irrigation ditches or facilities located within 300 feet of the subject property.

Conclusion of Law:

There will be no impacts to agricultural water user facilities.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

1. The subdivision is accessed from the east by Eastside Highway, a State-maintained highway, and from the north by Jessica Court, a privately-maintained road. The subdivider is proposing primary access from Eastside Highway and secondary access from Jessica Court. (*Market Place II Subdivision Application*)
2. In an email dated September 7, 2007 (*Exhibit A-1*), Road Supervisor David Ohnstad stated that he agreed with the subdividers' proposal that Jessica Court will serve as a secondary access to the subdivision and that the primary access would be considered the proposed Market Street South.
3. The subdivision has a preliminary approach permit from the Montana Department of Transportation (MDT) allowing an access onto Eastside Highway (*Application*).
4. In a letter dated October 17, 2007 (*Exhibit A-2*) Glen Cameron, MDT states that they "encourage the use of consolidated access locations and/or internal easements to reduce the number of access locations." During a November 13, 2007 phone conversation (*Exhibit A-3*), Glen Cameron stated that MDT typically prefers less access locations, but since a preliminary approach permit has already been granted for the proposed project, MDT will stand by their original recommendation to allow the approach onto Eastside Highway. A final approach permit will be required prior to final plat approval. (*Condition 4*)
5. To mitigate impacts on the road system, the subdivider shall place a "no ingress/egress" restriction along the Eastside Highway frontage of the subdivision, excepting the MDT approved approach. The "no ingress/egress" restriction shall be labeled on the final plat. A notification of the limitation of access onto a state road shall also be included in the Notifications Document. (*Conditions 1 and 6*)
6. All lots in the subdivision are proposed to be served by an internal road system. The Road and Bridge Department has approved the preliminary road plans (*Exhibit A-4*).
7. A General Discharge Permit for Stormwater Associated with Construction Activity from the Montana Department of Environmental Quality, road name petitions approved by the Ravalli County GIS Department for all internal roads, final road plans approved by the Ravalli County Road and Bridge Department, and engineer certification that all road improvements meet County Standards shall be submitted with the final plat application. All improvements are required to be completed prior to

- the final plat approval, unless a subdivision improvements guarantee with adequate security is accepted by the Board of County Commissioners. (Section 3-3-4, RCSR)
8. In order to ensure that the public has usage of the road within this subdivision and to mitigate impacts on local services, the internal subdivision roads shall be dedicated as public road and utility easements on the final plat. (*Condition 5*)
 9. To mitigate impacts on the road system and public safety, the subdivider shall install stop signs at the intersections of the internal roads, as shown on the preliminary plat. (*Condition 7*)
 10. A Road Maintenance Agreement (*Application*) was proposed for the internal subdivision roads and is required to be submitted with the final plat application. A notification of the Road Maintenance Agreement shall be included in the Notifications document. (*Condition 1*)
 11. Wastewater treatment will be provided by connections to the Corvallis County Sewer District's Public Sewer System. Final approval from the District will be granted once a set of conditions are met. To mitigate impacts on local services, the subdivider shall meet the Sewer District's requirements as outlined in the Letters of Acceptance for Sewer Connection dated June 30, 2005 and October 18, 2006 (*Application*). Prior to final plat approval, the subdivider shall submit evidence from the Corvallis County Sewer District showing that annexation into the district has been granted. (*Condition 14*)
 12. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (*Condition 3*)
 13. Bitterroot Disposal provides service to this site.
 14. The subdividers are proposing cash-in-lieu of parkland dedication (*Application*). Section 6-1-7 of the Ravalli County Subdivision Regulations requires the developer to hire a real estate appraiser legally qualified to appraise undeveloped land to determine the fair market value of land prior to final plat approval. In a letter dated November 15, 2006 (*Exhibit A-5*), the Ravalli County Park Board agreed with the subdivider's proposal of cash-in-lieu of parkland.
 15. The property is located within the Corvallis School District. (*Market Place II Subdivision Application*)
 16. This proposal will add approximately 16 students to the Corvallis School District. (*Census 2000*)
 17. In a letter dated October 17, 2007, the Corvallis School District requested that proper mitigation measures be negotiated between the subdivider and the Board of County Commissioners when considering increased impacts to the School District. In addition to a contribution to offset the costs of educating additional students, the letter asks that appropriate bus turnouts and shelters be considered where appropriate. (*Exhibit A-6*).
 18. The subdivider is proposing a contribution to the Hamilton Christian Academy in the amount of \$500 per lot. No statistics or information explaining why a \$500 per lot contribution to the Hamilton Christian Academy would mitigate impacts on schools was provided. (*Market Place II Subdivision Application*)

19. The average cost per pupil in the Corvallis School District is \$6,544. (*Exhibit A-7*)
20. To mitigate impacts of the proposal on the School District, the subdivider shall provide evidence that an amount (to be negotiated by the subdivider with the school district and Board of County Commissioners) per lot has been contributed to the Corvallis School District. (*Condition 8*)
21. The Ravalli County Public Safety Services (Sheriff, E-911, DES) provide emergency services to the area. The current level of service is not known, but it is generally understood that the Ravalli County Public Safety Services operates at an inadequate level of service. The subdivider shall negotiate with the Board of County Commissioners on an amount per lot contribution to mitigate impacts to local services. (*Condition 9*)
22. The subdivision is located within the Corvallis Rural Fire District. The Corvallis Rural Fire District has provided general comments on subdivision proposals, indicating they have adopted a policy which addresses access, posting of addresses, and water supply requirements. Additionally, the following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Hamilton Rural Fire District, has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Hamilton Rural Fire District for further information". Conditions of approval will meet the recommendations of the Corvallis Rural Fire District. (*Exhibit A-8*) (*Conditions 2, 10, and 15*)
23. To mitigate the impacts of this subdivision on local services and public health and safety, the subdivider shall apply for County-issued addresses for each lot within this subdivision. A provision is included in the protective covenants requiring property owners to post County-issued addresses at their driveways to enhance provision of emergency services. (*Conditions 2 and 11*)
24. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. The agency was notified of the proposal, but no comments were received to this date.
25. The United States Postal Service (USPS) sent a letter to the Planning Department on June 8, 2007 and an email on June 29, 2007 (*Exhibit A-9*) requesting that Collection Box Units (CBUs) be required for all subdivisions with eight or more lots (or if the local post office requests a CBU) and that the locations of the boxes be approved by the USPS. (*Condition 12*)

Conclusion of Law:

With the conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be minimized.

CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT

Findings of Fact:

Individual wells and connection to the Corvallis County Sewer District are proposed to serve lots within the subdivision and adequate information has been provided to the Environmental Health Department for local subdivision

- review to occur. The applicant shall submit a certification of subdivision approval from DEQ prior to final plat approval. *(Exhibit A-10)*
- The subdivider received letters dated June 30, 2005 and October 18, 2006 *(Application)* from the Corvallis County Sewer District approving of the annexation of the proposed lots into the district. Prior to final plat approval, the subdivider shall submit evidence from the Corvallis County Sewer District showing that annexation into the district has been granted. *(Condition 14)*
- The northeastern portion of the proposed subdivision is separated from Willow Creek by approximately 500 feet. The subdivider requested and received a Waiver of Floodplain Analysis on December 6, 2006 *(Exhibit A-11)*. In the granting of the waiver request, the Ravalli County Floodplain Administrator recommended that property owners within the proposed subdivision obtain flood insurance due to the proximity to the Bitterroot River Floodplain and because the property lies entirely within the Painted Rocks Dam Inundation area.
- To mitigate air pollution resulting from home heating emissions, the protective covenants filed with the final plat shall state that the County recommends that home owners install EPA-certified wood stoves to reduce air pollution. *(Condition 2)*
- To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. This provision is already included in the existing Centennial Subdivision Covenants. *(Condition 2)*
9. A noxious weed and vegetation control plan is required to be filed with the final plat of each phase for ground disturbance associated with a subdivision. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district, shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval from the board. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. *(Condition 2)*

Conclusion of Law:

Impacts from this subdivision on the natural environment will be minimized with the requirements of final plat approval and imposition of mitigating conditions.

CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

1. The property is not located within the Montana Fish, Wildlife, and Parks (FWP) identified big game winter range.
2. There are no species of special concern listed in the vicinity of the property. *(Montana Natural Heritage Program)*
3. The property is located within the community of Corvallis where there is already denser development. *(Aerial Photo)*
4. FWP requested that living with wildlife provisions be included in the covenants to

mitigate impacts on wildlife and wildlife habitat (*Exhibit A-12*). To mitigate impacts on wildlife, the covenants shall include the living with wildlife provisions. (*Condition 2*)

Conclusions of Law:

1. Condition 2 will provide future lot owners education on how to live with wildlife.
2. By providing housing near an existing community and infrastructure, this proposal may actually protect wildlife habitat in other areas.
3. This subdivision will have few impacts on wildlife and wildlife habitat.

CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

1. The proposed subdivision is located within the Corvallis Rural Fire District and with Conditions 2, 10, and 15 impacts to the District will have been addressed.
2. The Ravalli County Public Safety Services (Sheriff, E-911, DES) provide emergency services to the area. The current level of service is not known, but it is generally understood that Ravalli County Public Safety Services operate at an inadequate level of service.
3. The subdivider shall negotiate with the Board of County Commissioners on an amount per lot contribution to mitigate impacts on public health and safety. (*Condition 9*)
4. To mitigate impacts on public health and safety, the subdivider shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (*Conditions 2 and 11*)
5. The subdivision has a preliminary approach permit from the Montana Department of Transportation (MDT) allowing an access onto Eastside Highway (*Application*). In a letter dated October 17, 2007 (*Exhibit A-2*) Glen Cameron, MDT states that they "encourage the use of consolidated access locations and/or internal easements to reduce the number of access locations." During a November 13, 2007 phone conversation (*Exhibit A-3*), Glen Cameron stated that MDT typically prefers less access locations, but since a preliminary approach permit has already been granted for the proposed project, MDT will stand by their original recommendation to allow the approach onto Eastside Highway. A final approach permit will be required prior to final plat approval. (*Condition 4*)
6. To mitigate impacts on public health and safety, the subdivider shall place a "no ingress/egress" restriction along the Eastside Highway frontage of the subdivision, excepting the MDT approved approach. The "no ingress/egress" restriction shall be labeled on the final plat. A notification of the limitation of access onto a state road shall also be included in the Notifications Document. (*Conditions 1 and 6*)
7. To mitigate impacts on the road system and public safety, the subdivider shall install stop signs, as shown on the preliminary plat, at the intersections of the internal roads. (*Condition 7*)
8. Wastewater treatment will be provided by connections to the Corvallis County Sewer District's Public Sewer System. Final approval from the District will be

granted once a set of conditions are met. To mitigate impacts on local services, the subdivider shall meet the Sewer District's requirements as outlined in the Letters of Acceptance for Sewer Connection dated June 30, 2005 and October 18, 2006 (*Application*). Prior to final plat approval, the subdivider shall submit evidence from the Corvallis County Sewer District showing that annexation into the district has been granted. (*Condition 14*)

9. The northeastern portion of the proposed subdivision is separated from Willow Creek by approximately 500 feet. The subdivider requested and received a Waiver of Floodplain Analysis on December 6, 2006 (*Exhibit A-11*). In the granting of the waiver request, the Ravalli County Subdivision Administrator recommended that property owners within the proposed subdivision obtain flood insurance due to the proximity to the Bitterroot River Floodplain and because the property lies entirely within the Painted Rocks Dam Inundation area. To mitigate potential impacts on public health and safety, a notification of the Painted Rocks and Como Dam Inundation areas shall be included in the Notifications Document and a statement shall be shown on the final plat, as shown on the preliminary plat. (*Conditions 1 and 13*)
10. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. This provision is already included in the existing Centennial Subdivision Covenants. (*Condition 2*)
11. There is a prevalence of radon in the County and to mitigate impacts on public health and safety, the covenants shall include a statement regarding radon exposure. This provision is already included in the existing Centennial Subdivision Covenants. (*Condition 2*)

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on public health and safety.

COMPLIANCE WITH:

1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements or conditions have been required to bring the proposal into compliance.

2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

CONSISTENCY WITH EXISTING ZONING AND COVENANTS

Findings of Fact:

1. This subdivision is subject to the settlement agreement filed in the *Lords et al. v. Ravalli County* lawsuit regarding the Interim Zoning Regulations enacted November 7, 2006 and may be affected by final adjudication from said settlement.
2. There are no existing covenants on the property.

Conclusions of Law:

1. Covenants are not present.
2. Zoning does not apply at this time.

PROVISION OF EASEMENTS FOR UTILITIES

Findings of Fact:

1. The plat indicates utility easements are located along and within the easement/right-of-way of Eastside Highway and Jessica Court. Utility easements are proposed to be extended along each internal subdivision road.
2. According to the application, the proposed subdivision will be served by Northwester Energy and Qwest Telephone.
3. Utility easements are required to be shown on the final plat.

Conclusion of Law:

Utility services are available to the subdivision.

PROVISION OF LEGAL AND PHYSICAL ACCESS

Finding of Fact:

Physical and legal access for this subdivision is proposed via the internal subdivision roads, and Eastside Highway. (*Local Services*)

Conclusion of Law:

With the conditions of approval and requirements of final plat approval, the proposal meets physical and legal access requirements.

Commissioner Grandstaff opened public comment.

Terry stated he is proposing mitigation on 29 of the 31 lots as stated in the Staff Report. He stated on the existing 2 parcels, they have been paying property taxes. Terry clarified the mitigation offered for the Fire District to be \$500 per new lot or like kind exchange to be approved by Corvallis Fire Department.

Commissioner Grandstaff requested any further comment hearing none. She then closed public comment and opened Board deliberations.

Commissioner Grandstaff expressed her concern with 31 wells going on 11 acres without any comments from DNRC. Tristan replied he does not know why they did not submit any comment.

Commissioner Rokosch stated any information in regard to water supply is pertinent. Terry replied the subdivision adjacent to this location has 18 wells. The water results were 300 gallons per minute. Lack of water in this area is not an issue; there is plenty of water and this proposal within the Corvallis Sewer District. Therefore, contamination is not an issue. Commissioner Driscoll asked if it was normal not to have any response by DNRC. Tristan replied their responses are usually 'hit or miss'.

Commissioner Thompson stated a draw down test was completed on the subdivision across the road from this proposal five years ago with similar results. He felt there is ample water. Terry stated it is above the quantity required for adequate water supply. Commissioner Rokosch stated it is not the availability in question; it is the lack of documentation that substantiates the water quantity. He expressed his concern with the potential well interference. Discussion by the Board has been the significant amount of

water in a closed basin and in this particular case, within Willow Creek. He asked how it would affect agricultural use downstream. Terry replied the ground water is very high and in abundance. It would boggle his mind if this subdivision came down to water quantity. The concern about contamination in this case is not an issue since it will be pumped into Corvallis Sewer District. Commissioner Driscoll stated in her mind, it comes down to being too close to the next person's well. She would like to see more information. Terry replied DEQ does not have a problem with the wells and the sewer lines. They both met DEQ regulations. Ron added DEQ regulations state the wells have to meet a setback of 10 feet.

Commissioner Grandstaff asked if it was possible to have shared wells. Terry replied it is not an option with this subdivision. He explained the difficulty of having a community well supply for this area through DNRC. Commissioner Grandstaff stated all agricultural activities will be watered by sprinklers and asked where that water would come from. Terry replied it would be through irrigation ditches.

Commissioner Driscoll asked about the amount of water supplied for the wells and if there is a possibility to have a community water supply. Terry replied he has spoken with an individual owning the adjacent subdivision in regard to utilizing a public water supply. Since this individual is currently in litigation over a public water supply, he is unable to use that option at this time.

Commissioner Driscoll expressed her concern with having 31 wells drawing down at 35 gallons per minute. She asked if one well could be utilized by more than one lot. Terry replied according to the numbers, it is not recommended by DEQ. Ron stated 35 gallons per minute is the limit for a well restriction. He also stated what the reality is of people using and the requirements are different.

Ron stated 10 gallons per minute is the least amount for a well. This development meets the subdivision regulations and meets the DEQ requirements. DNRC sends out a boiler plate letter. Why not send a specific letter to the property. Commissioner Grandstaff stated DNRC was not on the list of contacts. They may have had specifics to this property but no comment was received. **Commissioner Chilcott requested Tristan verify DNRC was contacted.**

Terry stated DEQ has given their response therefore there is a viewing regulator regarding this property. You have to submit a water log with the property water right. If the water right dries the well, there is a process through DNRC. Commissioner Driscoll stated the wells can't be called to stop by DNRC. Terry stated the likely hood of that happening is not an issue. If DNRC believes this is the cause of the well going dry, they are responsible of having the water right being given back to them. Commissioner Driscoll requested clarification of Terry's statement by DNRC.

Tristan replied DNRC was contacted and chose not to comment. Commissioner Chilcott asked Civil Counsel Karen Mahar if there would be civil recourse if the well dried up. Karen replied she is not familiar with Commissioner Driscoll's comments on

drawing on wells. However, she believes you would have to demonstrate the cause with evidence. Commissioner Chilcott stated the concern is the proximity of drilling a new well so close to an existing well.

Ron stated they are demolishing the existing septic systems and connecting to the Corvallis Sewer District. Terry stated subdivisions are now signing a RSID waiver. Commissioner Chilcott asked how it would work with Corvallis Sewer District if this subdivision gets in prior to the one next to it. Terry replied it is much simpler than running a sewer line. He does not see any issues of hook up to the Sewer District. He stated the Sewer District has addressed the issue of how the subdivisions can hook up to a community water supply in the future. He then explained the sewer system to the Board and how it will handle the sewage for the subdivision.

Commissioner Grandstaff asked if there were any more questions on the wells. She reiterated her concern with 31 wells being a possible contaminant to the aquifer. Terry explained in this case with the size of the lots, he believes it would work well with the community system.

Commissioner Grandstaff requested a brief recess. Commissioner Chilcott made a motion to recess for 15 minutes. Commissioner Driscoll seconded the motion, all voted 'aye'.

Commissioner Grandstaff reconvened the meeting.

Commissioner Rokosch requested the Board contact Bill Shultz from DNRC via speaker phone in regard to their questions. Terry stated he does not want to get caught up in obtaining permits that are not required of the developer. His understanding was they could not do a shared well.

Bill Shultz joined the meeting via speaker phone. Commissioner Grandstaff reviewed the subdivision with Bill and requested any other options for the wells. Bill replied he did review the subdivision file and his comment is the standard comment. One well per lot which satisfies the 35 gallon per lot would be legal. At this point there is no density limitation on these wells. He agreed there are some reasons to consider community wells, such as fewer holes in the aquifers for less contamination, and testing for water quality. Community well would allow folks that could be potentially affected the opportunity for objection through the public notification process. He stated he has sent the letter numerous times, but the end result in his understanding is subdivisions are approved with exempt wells. There is potential for shared wells that are exempt but it is usually to reduce the number of wells. He stated 35 gallons per minute can serve several homes and stay under the exemption and the volume of the tank comes under exemption. He stated the issue they run into in having three homes on one well is the capacity for storage. Bill stated those that share a well would fall under that exemption. He also noted before these lots can be developed, there is a potential of the regulations changing.

Commissioner Grandstaff asked about shared wells. Bill replied by using the standard volumes, and the quarter acre of the lots, a developer could generally fit around four to five wells under 10 acre feet. That is using the volume allowed by the exemption. This subdivision is on the smaller end of what is typically looked at. It could serve up to four to five lots. Bill stated the problem they run into is the issue of 35 gallons per minute. That would be based on the design of the wells. Commissioner Driscoll asked about the primary users of surface water. Bill replied to his knowledge, it has not been done in Montana. He does recall it happening in Idaho but it could be problematic in making the call as to what water is being intercepted. Commissioner Rokosch asked in regard to the shared well would there be any additional permits as long as it stays in the exemption limits? Bill replied not from them and he does not believe it would trigger anything from DEQ either unless the pump could not provide 35 gallons per minute.

Ron stated it would be difficult for more than two homes to share a well due to the easement issues across multiple lots. Bill concurred with Ron and stated the final plat would have to show the easement and have a shared well agreement with a point of diversion with two access points. Commissioner Rokosch stated the shared wells would be limited to two units. He stated if the gallons per minute were available, they could look at four or five units sharing a well. Bill replied it depends on the lot size. Four is fine, five is stretching it. The question is how many homes you can service with 35 gallons per minute. You have to even out the demand a little bit during peak water use.

Commissioner Rokosch asked if it could be satisfied with bigger units. Bill replied yes but it would be up to the engineer associated with the design. Ron interjected that would be a public water system at that point, with the discussion of public water rights. Ron stated having two units share a well would be the best they could do. Bill stated they will need the agreement to spell out clearly who is responsible for what maintenance with a shared well.

Robert Smyth stated anytime you have a shared well, you have to have a water association. He asked who is going to pay the bill and would there be a separate meter? He felt this creates more problems than it is worth.

Commissioner Rokosch asked about dedicating a monitoring well on this project and if it is something desirable and permissible. Bill replied DNRC doesn't have any statutory requirements for a monitoring well for a subdivision unless there is a specific issue. He suggested they would have to have a specific objective of what would be monitored, including a schedule of who is going to do it and for how long they would monitor it.

Commissioner Rokosch asked in light of this information, if Terry would consider reducing the number of wells. Terry replied he would like to contact DEQ since he already has DEQ approval for individual wells. Commissioner Grandstaff stated it was concluded there is a shared well form that can be utilized for an agreement. Ron replied they have already submitted this to DEQ and received approval. He stated if they had to, they could go back again. Ron asked if they did not find any problems with DEQ or the Sanitarian's Office, would they have to come back through the subdivision process

again? Terry stated he has an existing well and there is another well on the existing lot. He stated they would not be able to do shared wells on every lot. **Terry stated they are willing to put in shared wells everywhere possible as approved by DEQ with the idea being two lots on each well as long as there are no additional permits required.**

Terry also stated he foresees some problems in regard to the purchasers of these lots and the agreements that would have to be drawn up with their neighbors. Ron stated there may be a problem if one owner is on a shared well and the other lot is unoccupied with the well on the property, because the one owner will be paying to hook up the electricity which could be costly. Further discussion followed about problems with shared well agreements.

Ron stated there would have to be a revised plat map showing the easements and agreements filed. The way the agreement is written states the maintenance of the well is shared equally. Karen Mahar stated it is an agreement that goes to that specific property. If the owner fails to keep the agreement, it would go into litigation. Commissioner Chilcott asked how the Board could impose this agreement with supporting regulations. Commissioner Grandstaff stated Terry agreed to shared wells. Outside of what has been agreed to, she does not know how to answer that. Tristan stated they are basing this on ground water regulations.

Commissioner Grandstaff stated 31 woodstoves are a problem. Commissioner Driscoll stated woodstoves are a concern for asthmatic people. Terry stated he has friends who have to use woodstoves as a heat source because they do not have any other choice. It is purely a financial matter. Commissioner Grandstaff stated you have to weigh between the increasing air pollutants and regulations versus the financial impact to the homeowners.

Commissioner Chilcott stated there are EPA certified woodstoves. He stated he wants the Board to recognize there are hard economic times and some people rely on being able to use woodstoves as a heat source. Tristan stated they are not requiring anyone to do anything and there aren't any building permits. The condition within the staff report states woodstoves are to be utilized as a secondary heating source, with a request to refrain from them altogether. They also have to be EPA certified. Commissioner Grandstaff stated it does not matter if woodstoves are EPA certified, as there is still the problem of utilizing 31 woodstoves in this area in regard to air quality.

Commissioner Rokosch asked Terry if he would incorporate the wood stove condition into his covenants. Terry replied he would incorporate them into the covenants requiring the wood stoves to be EPA certified and as a secondary heating source.

Commissioner Grandstaff stated in granting the waiver request, they recommend flood insurance. She asked how does that affect the county's ability to the obtain insurance? Tristan replied he can't answer that, it would be a question for the Flood Plain Administrator. Tristan stated if it was a requirement for these lot owners to have flood insurance, he is sure the Flood Plain Administrator would have addressed that.

Commissioner Rokosch questioned the soils classification as prime farm land of State importance. Terry stated the soils classification changes with the website. Commissioner Rokosch stated his concern with prime farm land being permanently taken out of agricultural use. Terry stated they are offering a contribution to the Open Lands Board in order to mitigate the prime farm land issue. He stated by doing the density close to town, it reduces the sprawl. Commissioner Rokosch stated he appreciates that but without a known loss value, they have to come up with a balance and secure the farm land that is being converted into housing. In the absence of that, the Board does not have any assurances that higher density reduces sprawl. Commissioner Driscoll stated she is satisfied it has been sufficiently mitigated with the offered contribution. Terry stated the one level of topsoil found was rare. The soil has been used as agriculture but it is not deep topsoil. Commissioner Thompson stated he personally rototilled on Lot 27 and it is very rocky. He can't see it being used for agricultural purposes.

Commissioner Grandstaff stated the Weed Board has a problem with soil being removed from one area and brought to another as it may cause weed contamination and spread. Terry explained they do not have a weed plan finalized due to this being under old regulations and being so, are not required to file a noxious weed plan until final plat.

Commissioner Grandstaff requested a vote for the offered mitigation of \$250 per new lot to Open Lands Board payable upon first conveyance, and with CPI being added. All Commissioners voted 'aye' in regard to being sufficiently mitigated.

Commissioner Rokosch stated he does not agree with the offered mitigation of \$640 per new lot to Corvallis School District and \$640 per new lot to Hamilton Christian Academy payable upon first conveyance with the CPI added. He believes it creates an issue because the Christian Academy is a private institution. Terry replied this is a voluntary contribution and he believes all of it should go to the Hamilton Christian Academy if he so wishes. He thought it was fair to divide these monies between the schools. He stated if this is a voluntary contribution, he would like to see it all go to home schooled children since his own children are home schooled and you don't see the impacts of that being mitigated.

Tristan recapped the breakdown of the tax levy for Corvallis School District. Commissioner Chilcott stated the Board is trying to mitigate the impacts to the schools for the new children. He asked if they could take the nexus to include the children attending the Christian Academy and not Corvallis School. Terry stated this is not a half student per lot at this time. Commissioner Chilcott stated this is a preference setting. He is not sure it has enough nexus to support it. Commissioner Grandstaff stated she does not want to 'open this can of worms'. She suggested accepting the offered contribution for Corvallis School District and not the Hamilton Christian Academy. If Terry would like to make that contribution on his own, that is fine, but she would rather not tie it into this subdivision.

Commissioner Grandstaff requested a vote for sufficient mitigation of the offer of \$640.00 per new low for Corvallis School payable upon final plat. Commissioner

Grandstaff, Commissioner Thompson, Commissioner Chilcott, Commissioner Driscoll voted 'aye'. Commissioner Rokosch voted 'nay' based on the amount of the school contribution.

Tristan recapped the offered mitigation as follows:

\$500 per new lot to the Corvallis Fire Department payable upon final plat approval, \$500 per new lot to Emergency Services payable upon first conveyance with CPI added, \$200 per new lot to County Services upon first conveyance with CPI added, \$250 per new lot to Open Lands Board payable upon first conveyance with CPI added, \$640 per new lot to Corvallis School District payable upon final plat approval, and an additional 4 foot pavement on all interior roads with a stripe painted for pedestrian/bicycle traffic only and to install shared wells everywhere possible as approved by DEQ with the idea being two lots for each well as long as there are no additional permits required beyond DEQ approval, new shown easements on the final plat and shared well agreements to be filed with final plat.

Commissioner Rokosch made a motion to approve Market Place II Major Subdivision based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report and as mitigated here today. Commissioner Chilcott seconded the motion all voted 'aye'.